

AMENDED IN ASSEMBLY AUGUST 22, 2008

AMENDED IN ASSEMBLY AUGUST 15, 2008

AMENDED IN ASSEMBLY JULY 2, 2008

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AMENDED IN SENATE MAY 27, 2008

SENATE BILL

No. 1515

Introduced by Senator Kuehl

February 21, 2008

An act to amend Section 32282 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

SB 1515, as amended, Kuehl. Pupil discipline: restraint and seclusion.

Existing law prohibits a person employed by or engaged in a public school to inflict, or cause to be inflicted, corporal punishment upon a pupil.

This bill would prohibit an educational provider from using chemical restraint, as defined, mechanical restraint, as defined, physical restraint, as defined, or seclusion, as defined, for the purpose of coercion, discipline, convenience, or retaliation by staff. *The bill would provide that the prohibition regarding physical restraint only applies to the use of physical restraint on individuals with exceptional needs, as defined, who receive special education and related services.* The bill would limit the use of physical restraint, as defined, and would specify conditions under which an educational provider would be authorized to use physical restraint. *The bill would provide that those limitations and conditions*

only apply to the use of physical restraint on individuals with exceptional needs, as defined, who receive special education and related services. The bill would allow, until January 1, 2012, nonpublic, nonsectarian schools, and certain district-designated alternative programs to use seclusion if specified conditions are met.

Existing law requires a schoolsite council to write and develop a comprehensive school safety plan, except in the case of a small school district, as defined, that develops a districtwide comprehensive school safety plan that is applicable to each schoolsite in the district. The comprehensive school safety plan is required to include the rules and procedures on school discipline.

This bill would authorize the comprehensive school safety plan also to include the rules and procedures regarding the use of restraint and seclusion.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 32282 of the Education Code is amended
2 to read:
3 32282. (a) The comprehensive school safety plan shall include,
4 but not be limited to, both of the following:
5 (1) Assessing the current status of school crime committed on
6 school campuses and at school-related functions.
7 (2) Identifying appropriate strategies and programs that will
8 provide or maintain a high level of school safety and address the
9 school's procedures for complying with existing laws related to
10 school safety, which shall include the development of all of the
11 following:
12 (A) Child abuse reporting procedures consistent with Article
13 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of
14 Part 4 of the Penal Code.
15 (B) Disaster procedures, routine and emergency, including
16 adaptations for pupils with disabilities in accordance with the
17 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
18 et seq.). The disaster procedures also shall include, but not be
19 limited to, both of the following:
20 (i) Establishing an earthquake emergency procedure system in
21 every public school building having an occupant capacity of 50

1 or more pupils or more than one classroom. A district or county
2 office may work with the Office of Emergency Services and the
3 Seismic Safety Commission to develop and establish the earthquake
4 emergency procedure system. The system shall include, but not
5 be limited to, all of the following:

6 (I) A school building disaster plan, ready for implementation
7 at any time, for maintaining the safety and care of pupils and staff.

8 (II) A drop procedure whereby each pupil and staff member
9 takes cover under a table or desk, dropping to his or her knees,
10 with the head protected by the arms, and the back to the windows.
11 A drop procedure practice shall be held at least once each school
12 quarter in elementary schools and at least once a semester in
13 secondary schools.

14 (III) Protective measures to be taken before, during, and
15 following an earthquake.

16 (IV) A program to ensure that pupils and both the certificated
17 and classified staff are aware of, and properly trained in, the
18 earthquake emergency procedure system.

19 (ii) Establishing a procedure to allow a public agency, including
20 the American Red Cross, to use school buildings, grounds, and
21 equipment for mass care and welfare shelters during disasters or
22 other emergencies affecting the public health and welfare. The
23 district or county office shall cooperate with the public agency in
24 furnishing and maintaining the services as the district or county
25 office may deem necessary to meet the needs of the community.

26 (C) Policies pursuant to subdivision (d) of Section 48915 for
27 pupils who committed an act listed in subdivision (c) of Section
28 48915 and other school-designated serious acts which would lead
29 to suspension, expulsion, or mandatory expulsion recommendations
30 pursuant to Article 1 (commencing with Section 48900) of Chapter
31 6 of Part 27 of Division 4 of Title 2.

32 (D) Procedures to notify teachers of dangerous pupils pursuant
33 to Section 49079.

34 (E) A discrimination and harassment policy consistent with the
35 prohibition against discrimination contained in Chapter 2
36 (commencing with Section 200) of Part 1.

37 (F) The provisions of any schoolwide dress code, pursuant to
38 Section 35183, that prohibits pupils from wearing “gang-related
39 apparel,” if the school has adopted that type of a dress code. For
40 those purposes, the comprehensive school safety plan shall define

1 “gang-related apparel.” The definition shall be limited to apparel
2 that, if worn or displayed on a school campus, reasonably could
3 be determined to threaten the health and safety of the school
4 environment. Any schoolwide dress code established pursuant to
5 this section and Section 35183 shall be enforced on the school
6 campus and at any school-sponsored activity by the principal of
7 the school or the person designated by the principal. For the
8 purposes of this paragraph, “gang-related apparel” shall not be
9 considered a protected form of speech pursuant to Section 48950.

10 (G) Procedures for safe ingress and egress of pupils, parents,
11 and school employees to and from school.

12 (H) A safe and orderly environment conducive to learning at
13 the school.

14 (I) The rules and procedures on school discipline adopted
15 pursuant to Sections 35291 and 35291.5.

16 (J) Hate crime reporting procedures pursuant to Chapter 1.2
17 (commencing with Section 628) of Title 15 of Part 1 of the Penal
18 Code.

19 (b) The comprehensive school safety plan may include the rules
20 and procedures regarding the use of restraint and seclusion pursuant
21 to Article 5.5 (commencing with Section 49010) of Chapter 6 of
22 *Part 27* of Division 4 of Title 2.

23 (c) It is the intent of the Legislature that schools develop
24 comprehensive school safety plans using existing resources,
25 including the materials and services of the partnership, pursuant
26 to this chapter. It is also the intent of the Legislature that schools
27 use the handbook developed and distributed by the School/Law
28 Enforcement Partnership Program entitled “Safe Schools: A
29 Planning Guide for Action” in conjunction with developing their
30 plan for school safety.

31 (d) Grants to assist schools in implementing their comprehensive
32 school safety plan shall be made available through the partnership
33 as authorized by Section 32285.

34 (e) Each schoolsite council or school safety planning committee
35 in developing and updating a comprehensive school safety plan,
36 where practical, shall consult, cooperate, and coordinate with other
37 schoolsite councils or school safety planning committees.

38 (f) The comprehensive school safety plan may be evaluated and
39 amended, as needed, by the school safety planning committee, but
40 shall be evaluated at least once a year, to ensure that the

1 comprehensive school safety plan is properly implemented. An
2 updated file of all safety-related plans and materials shall be readily
3 available for inspection by the public.

4 (g) The comprehensive school safety plan, as written and
5 updated by the schoolsite council or school safety planning
6 committee, shall be submitted for approval under subdivision (a)
7 of Section 32288.

8 SEC. 2. Article 5.5 (commencing with Section 49010) is added
9 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education
10 Code, to read:

11
12 Article 5.5. Restraint and Seclusion
13

14 49010. The Legislature finds and declares all of the following:

15 (a) Seclusion and restraint may cause trauma and injury to both
16 the individual subjected to these techniques and the personnel
17 executing them.

18 (b) The use of seclusion and restraint as interventions when a
19 pupil poses an imminent risk of serious physical harm to self or
20 others are not therapeutic or educational. Their use does not
21 positively change behavior and is limited to emergency
22 interventions.

23 49011. For purposes of this article, the following definitions
24 apply:

25 (a) “Chemical restraint” means the administration of a drug or
26 medication to manage a pupil’s behavior or restrict a pupil’s
27 freedom of movement that is not a standard treatment and dosage
28 for the pupil’s medical or psychiatric condition.

29 (b) “Department” means the State Department of Education.

30 (c) “Educational provider” means an entity or a person that does
31 both of the following:

32 (1) Receives support in any form from a program supported in
33 whole or in part with funds appropriated by the department.

34 (2) Provides educational or related services, supports, or other
35 assistance to individuals in a public or private elementary or
36 secondary school.

37 Educational provider includes all local educational agencies,
38 including charter schools, the California School for the Deaf, the
39 California School for the Blind, nonpublic schools, and nonpublic

1 agencies, including both in-state and out-of-state nonpublic schools
2 and nonpublic agencies.

3 (d) “Mechanical restraint” means the use of a mechanical device,
4 material, or equipment attached or adjacent to the pupil’s body
5 that he or she cannot easily remove that restricts the freedom of
6 movement of all or part of a pupil’s body, or restricts normal access
7 to the pupil’s body. Mechanical restraint does not include
8 mechanical devices, material, or equipment used for postural
9 support, during transportation, or used to improve the mobility
10 and independent functioning of a pupil rather than to restrict
11 movement.

12 (e) “Physical restraint” means the use of a manual hold to restrict
13 freedom of movement of all or part of a pupil’s body, or to restrict
14 normal access to the pupil’s body. Physical restraint is a
15 staff-to-pupil physical contact in which the pupil unwillingly
16 participates. Physical restraint does not include briefly holding a
17 pupil without undue force in order to calm or comfort or to prevent
18 unsafe behavior, such as running into traffic or engaging in a
19 physical altercation, or physical contact intended to gently assist
20 or prompt a pupil in performing a task or to guide or assist a pupil
21 from one area to another.

22 (f) “Seclusion” means the involuntary confinement of a pupil
23 alone in a room or area from which the pupil physically is
24 prevented from leaving. “Seclusion” does not mean a supervised
25 timeout, in which an adult is continuously present in the room with
26 the pupil.

27 49012. (a) An educational provider shall not use seclusion,
28 chemical restraint, mechanical restraint, or physical restraint for
29 the purpose of coercion, discipline, convenience, or retaliation by
30 staff.

31 (b) *The prohibition specified in subdivision (a) regarding*
32 *physical restraint shall apply only to the use of physical restraint*
33 *on individuals with exceptional needs, as defined in Section 56026,*
34 *who receive special education and related services.*

35 49013. (a) An educational provider shall not use any of the
36 following:

37 (1) A physical restraint technique that obstructs a pupil’s
38 respiratory airway or impairs the pupil’s breathing or respiratory
39 capacity, including techniques in which a staff member places

1 pressure on a pupil's back or places his or her body weight against
2 the pupil's torso or back.

3 (2) A pillow, blanket, or other item covering the pupil's face as
4 part of a physical restraint.

5 (3) An improvised restraint device, such as a sheet or belt.

6 (4) A physical restraint on a pupil who has a known medical,
7 psychological, or physical condition, and where there is reason to
8 believe that the use would endanger the pupil's life or seriously
9 exacerbate the medical, psychological, or physical condition of
10 the pupil. Known risk factors include a history of trauma or abuse,
11 obesity, agitated or excited syndromes, preexisting heart disease,
12 and respiratory conditions, including bronchitis or asthma.

13 (5) Placement of a pupil in a facedown position with the pupil's
14 hands held or restrained behind his or her back.

15 (6) Physical restraint as an extended procedure beyond the
16 immediate emergency.

17 (b) An educational provider shall avoid the use of prone restraint
18 techniques whenever possible.

19 (c) An educational provider may use physical restraint only if
20 all of the following conditions are met:

21 (1) It is an emergency situation and physical restraint is required
22 to prevent imminent serious physical harm to the pupil, staff, or
23 others.

24 (2) The educational provider has determined that less restrictive
25 alternatives and positive behavioral supports are ineffective.

26 (3) A staff member is continuously present and keeps the pupil
27 under constant face-to-face observation for signs of distress or
28 difficulty breathing.

29 (d) *This section shall apply only to the use of physical restraint*
30 *on individuals with exceptional needs, as defined in Section 56026,*
31 *who receive special education and related services.*

32 49014. An educational provider shall not use chemical restraint,
33 except as otherwise licensed to prescribe and administer
34 medication.

35 49015. An educational provider shall not use mechanical
36 restraint.

37 49016. It is the intent of the Legislature to completely phase
38 out the use of seclusion by all educational providers by January
39 1, 2012 and until that time to limit the use of seclusion as specified
40 in Section 49017.

1 49017. (a) Beginning January 1, 2012, an educational provider
2 shall not use seclusion.

3 (b) Until January 1, 2012, an educational provider shall not use
4 seclusion unless all of the following conditions are met:

5 (1) The educational provider is a nonpublic, nonsectarian school,
6 as defined in Section 56034, with intensive behavioral supports
7 or a district-designated alternative program with intensive
8 behavioral supports that is an alternative to a nonpublic,
9 nonsectarian school.

10 (2) The pupil placed in seclusion is an individual with
11 exceptional needs, as defined in Section 56026, has a current
12 individualized education program, and has the ability to understand
13 the purpose of seclusion and the directives given by the school
14 personnel regarding the seclusion.

15 (3) The pupil has a behavioral intervention plan or interim
16 behavioral intervention plan, while a functional analysis
17 assessment, pursuant to Section 3052(b) of Title 5 of the California
18 Code of Regulations, is being completed, and that plan takes into
19 account a pupil's developmental level and individual history of
20 trauma and abuse and includes the pupil's expressed preference
21 of emergency intervention. The plan shall be reviewed after every
22 incident of seclusion.

23 (4) The pupil placed in seclusion exhibits behavior that poses
24 an imminent risk of serious physical harm to school personnel, or
25 is in a facility otherwise licensed or permitted by the state to use
26 seclusion when the pupil poses an imminent risk of serious physical
27 harm to school personnel or others, and the behavior cannot be
28 addressed by a less restrict intervention.

29 (5) During the use of seclusion a staff member, who is free from
30 other responsibilities at the time, is continually present and keeps
31 the pupil under constant direct visual observation. A pupil cannot
32 be deprived of sleep, food, water, shelter, physical comfort, or
33 access to bathroom facilities.

34 (6) The period of seclusion shall not exceed 15 minutes except
35 as indicated below:

36 (A) A behavioral intervention case manager or, in the absence
37 of the behavioral intervention case manager, a site administrator
38 with training in behavioral intervention may approve continuation
39 of seclusion for a total duration not to exceed 30 minutes for any
40 one continuous seclusion event, after observing the pupil's behavior

1 while secluded and determining that the pupil continues to exhibit
2 behavior consistent with the conditions described in paragraph (4).

3 (B) A qualified mental health professional, as defined in Section
4 60020 of Title 2 of the California Code of Regulations, may
5 approve continuation of seclusion in a facility otherwise licensed
6 to use seclusion under Title 22 for a total duration not to exceed
7 60 minutes for any one continuous seclusion event, after observing
8 the pupil's behavior while secluded and determining that the pupil
9 continues to exhibit behavior consistent with the conditions
10 described in paragraph (4).

11 (7) The seclusion room meets all of the following requirements:

12 (A) It is not used for another purpose, including use as a storage
13 room, bathroom, or utility room.

14 (B) It is not used without a fire clearance from the local fire
15 authority.

16 (C) It does not prevent exiting by the use of locking or jamming
17 devices, including devices that allow for immediate release upon
18 removal of a staff member's foot, hand, or body from a magnetic
19 engagement pad or button, unless in a facility otherwise licensed
20 or permitted by state law to use a locked room.

21 (D) It is safe and free of hazards, including objects or fixtures
22 that can be broken or used by a pupil to inflict injury.

23 49018. (a) It is the intent of the Legislature that, except where
24 this article may grant more protections, this article shall be
25 interpreted as being consistent with Chapter 5.5 (commencing with
26 Section 56520) of Part 30 and its implementing regulations
27 commencing with Section 3052 of Title 5 of the California Code
28 of Regulations.

29 (b) It is also the intent of the Legislature to monitor the
30 implementation of this article and to encourage stakeholders,
31 including, but not limited to, disability rights advocacy groups,
32 representatives of education providers, and education organizations
33 to voluntarily make recommendations for future legislation and
34 budget augmentations on the topic of seclusion and restraint.